

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

CHARLES SAMUEL JOHNSON, JR.

PLAINTIFF

v.

Civil No.: 4:18-CV-04113

NURSE KING, OFFICER HENSLEY,
LIEUTENANT ADAMS, CORPORAL
NATHAN TEFFT, OFFICER EMANUEL
RODRIGUEZ, OFFICER A. LANDRETH

DEFENDANTS

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This is a civil rights action provisionally filed pursuant to 42 U.S.C. § 1983. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3)(2011), the Honorable Susan O. Hickey, United States District Judge, referred this case to the undersigned for the purpose of making a Report and Recommendation.

Currently before the Court is a Motion to Dismiss Certain Claims and Defendants by Defendants Rodriguez and Tefft. (ECF No. 14).

Plaintiff filed his Complaint in this case on August 3, 2018. (ECF No. 1). Plaintiff's sole claim against Defendant Rodriguez and Tefft are that they failed to protect him from assault by another inmate on August 11, 2016, while he was incarcerated in the Miller County Detention Facility. (ECF No. 1 at 12-14).

In their Motion, Defendants Rodriguez and Tefft ask the Court to dismiss Plaintiff's failure to protect claim for an incident arising on August 11, 2018. As grounds for the dismissal, Defendants correctly state that Plaintiff had previously reached a settlement agreement with them on the identical failure to protect claim in *Johnson v. Tefft*, Case No. 4:16-cv-4109. (ECF No. 14). Plaintiff notes this settlement in his Complaint for this case. (ECF No. 1 at 1).

In *Johnson v. Teft*, Case No. 4:16-cv-4109, Plaintiff reached a settlement agreement with Defendants Rodriguez and Teft during a settlement conference on May 10, 2018. At the conclusion of the Settlement Conference, both the Plaintiff and the Defendant acknowledged to the undersigned that they understood and agreed to the settlement. On July 17, 2018, the Honorable Susan O. Hickey entered a judgment dismissing the case pursuant to the terms of the settlement but retaining jurisdiction to vacate and reopen if necessary. (ECF No. 64). After Plaintiff refused to sign the settlement documents despite two revisions to address his concerns, the undersigned entered an Order granting Defendants Motion to Deposit Settlement Funds with the Registry of the Court on October 25, 2018. This Order released Defendants Rodriguez and Teft from liability with regard to Plaintiff's failure to protect claim arising on August 11, 2016. (ECF No. 74). On the same day, the undersigned also entered a Report and Recommendation recommending that Plaintiff's failure to protect claim against Defendants Rodriguez and Teft be dismissed with prejudice due to the settlement. (ECF No. 75).

Res judicata is an affirmative defense which may be properly raised in a Rule 12(b)(6) motion to dismiss if the defense is apparent on the face of the complaint. *C.H. Robinson Worldwide, Inc. v. Lobrano*, 695 F.3d 758 (8th Cir. 2012). The defense is applicable when "(i) the court that previously adjudicated the claim had jurisdiction to do so, (ii) the previous litigation resulted in a final judgment on the merits, and (iii) the previous suit involved the same cause of action between the same parties, or was based on the same nucleus of operative facts." *Larken, Inc. v. Wray*, 189 F.3d 729, 732 (8th Cir. 1999). "When the parties to a previous lawsuit agree to dismiss a claim with prejudice, such a dismissal constitutes a 'final judgment on the merits' for purposes of *res judicata*." *Id.* "[A] final judgment on the merits bars further claims by parties or

their privies based on the same cause of action.” *Costner v. URS Consultants, Inc.*, 153 F.3d 667, 673 (8th Cir. 1998).

Here, this Court had jurisdiction to adjudicate Plaintiff’s § 1983 claims in his 2016 case. Plaintiff has stated a failure to protect claim which is identical to the one alleged in his 2016 case, and he has named the identical Defendants for that claim. He agreed to the settlement at the settlement conference and further noted the settlement of that case in the Complaint for the current case.

Accordingly, I recommend that the Motion to Dismiss Certain Claims and Defendants by Defendants Rodriguez and Tefft (ECF No. 14) be GRANTED, and Defendants Rodriguez and Tefft be terminated as Defendants in this case.

The parties have fourteen days from receipt of the Report and Recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 5th day of November 2018.

/s/ *J. Marschewski*

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE